

[3.]

T H E
ABSURDITY

Of that New devised

State-Principle,
(V I Z.)

*That in a Monarchy, The Legislative
Power is Communicable to the Subject,
and is not radically in Sovereignty in one,
but in More.*

In a Letter to a Friend.

'Οὐκ ἀγαθὸν πολυκοιρανίη, εἰς κοίραν' ἔστι.
Hand Multos regnare bonum est, Rex unus est.

L O N D O N,
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S I R,

YOU cannot but remember, that at our last Meeting, there happened betwixt us, a hot dispute touching Co-ordination, occasioned by your reading the day before a Tract, not long since exposed to publick view, and Intituled, by the Author thereof, *An Account of the Growth of Knavery, &c.* In a Letter to a Friend, (In Answer to Two Pamphlets, the one styled, *An Account of the Growth of Popery and Arbitrary Government in England*; The other, *A seasonable Argument to perswade all the Grand Juries in England to Petition for a New Parliament*;) In which said Tract there are some Passages that seem very distastful to your Palat, but more especially that Sentence (pag. 44 & 45.) concerning the Legislative Power thus expressed by our Author.

“ The Making of Laws (sayes he) is a peculiar and incommuni-
 “ cable Priviledge of the Supream Power; / And the Office of the
 “ Two Houses in this Case, is only Consultive or Preparative, but
 “ the Character of the Power, rests in the Final Sanction, which
 “ is in the King; and effectually the passing of a Bill is but the
 “ Granting of a Request; The Two Houses make the Bill ’tis true,
 “ but the King makes the Law, and ’tis the Stamp, and not the
 “ Matter that makes it Currant.

This piece of Doctrine [say you] is very strong and Heterodox; for it contradicts, not only your own darling Sentiments, but also the opinion of many other Persons in this Nation, who hold, That the Legislature resides not in the King only, but in him, and in the Two Houses of Parliament; so that you, and those other Persons fancy a Mixture, or Co-ordinacy in the Supremacy it self, making the *English* Monarchy a Compound of Three Co-ordinate Estates.

This same opinion [say you] is founded upon the Authority of the Law Books, which tell us, That every Statute must be made by the King, Lords and Commons; And if it appear by the Act, that it is made by Two of them only, it is no Statute, as appears by 4 H. 7. 18. *b. Co. Lit.* 139. *b. Co.* 4. *Inst. f.* 25. *Co.* 2. *Inst.* 157, 158. 334. *Bulstrods Reports, Dominus Rex & Allen, v. Tooley.*

These same Authorities I allow as well as you, but then it must be with this distinction, that the Two Houses of Parliament, are in a sort Co-ordinate with His Majesty *Ad aliquid* to some Act, or Exercising the Supream Power, that is to say, there is an equal

Right in the King and the Two Houses of a Negative Voice in respect of new Laws to be Enacted, or old to be repealed; But if you intend by Co-ordination (as indeed you do) a Fellowship with the King, in the very Supremacy it self, you are much beside the Cushion, and truly in the wrong side of the Hedge too. Because it is repugnant to the nature thereof, and a clear Contradiction; If it be true as it is, that the King is our only Sovereign, there can be no such thing, as a Co-ordinate or Co-equal Power; If they be Co-partners in the Sovereignty, in what a fine Condition are we, that must be obliged to Impossibilities. For we must obey three Masters, Commanding contrary things. The Two Houses may as well injoyn us to do them Homage, which is, and ought to be performed only to the King, as to challenge a Corrival Power with the Sovereignty of Royalty. 'Tis true, no Law can be imposed on us, without the consent of the Two Houses, yet this doth not make them Co-ordinate with their Prince in the very Supremacy of Power it self, but still leaves the Power of Ordaining Supreamly in him as in the Fountain, though the Efflux or Exercise of that Power be not solely in his Will, but expects the Consent of his People; And therefore 'tis very curiously expressed by the Learned Mr. Hooker, *That Laws do not take their Constraining Force from the Quality of such as devise them, but from the Power that doth give them the strength of Laws: Le Roy le veult*, the King will have it so, is the Interpretative Phrase pronounced at the King's passing of every Act of Parliament: " And it was (sayes Sir Henry Filmer in that most excellent discourse " called *Patriarcha*) the Antient Custom for a long time, till the " dayes of H. 5. that the Kings, when any Bill was brought unto " them, that had passed Both Houses, to take and pick out what " they liked not, and so much as they chose was Enacted for a Law: " but the Custom of the later Kings hath been so Gracious, as to " allow alwayes of the entire Bill (and sometimes with a Tack- " ing too) as it hath passed both Houses.

So much (Sir) in general, touching your fancied Corrivality of Power, I come now to a more close and minute Application, and I argue thus:

If the Two Houses have a Joynt and Co-equal Authority with their King in making Laws and the like, it must be one of these two wayes, either it must be *Primitively* Seated in them, or it belongs to them by *derivative participation*.

First, the Two Houses of Parliament cannot have this Co-ordinate Power vested in them *Primitively* or *Radically*; For are not
Both

Both Houses Summoned by the King's Writ? Do they not sit in Parliament by Virtue only of the Authority Royal? Can either the Lords or Commons or both together Lawfully convene themselves, appoint the time and place of their own Meeting? Our Books of Law can tell you (Sir) that the Power of Convocating and keeping of Assemblies of Subjects; the Power of Calling, Holding and Proroguing of Parliaments is an Essential Part, and Inseparable Privilege of the *English* Regality.

All able Jurists and Politicians very well know, that the King is *Caput Principium & Finis Parliamenti*, solely made and Created by him, and into him only can be ultimately resolved; And therefore surely it must be the most unreasonable thing that ever was in the World, that Subjects Assembled by their Sovereign's Writ, should have a Co-equality of Power with their Prince, without whose call they could not meet together, and at whose will and pleasure they are Dissolved in Law, and bound to betake themselves to their own Habitations: And return to the *Statu quo* of Private Persons and Subjects, whereas Supremacy is a Publick and indelible Character of Lawful Authority.

But farther, can the Two Houses of Parliament pretend to be before our First King in time, can they outvie him in Seniority? Surely, no. As for the Lords, *Brañon* affirms, that the Earls and Barons were Created by the King, and assumed to him only for Counsel and Advice; which infers undoubtedly, that the Power they are invested withall, is not by a Contrivement or Reservation (as some Fanatics fancy) at the supposed Making of the First King, but proceeds, *ex Indulto Regum* from the gratuit Concessions of our Princes.

But it was Objected by you in our Disceptation as it hath been by others heretofore, that the very Stile of *Comites* and Peers, implies a Co-ordinative Association with the King in the Government; they are in Parliament His *Comites*, His Peers.

I Answer, that Mr. *Brañon* tells us, *Rex parem non habet in Regno suo*, the King has no Peer, and offereth us another Reason of the Stile of *Comites*, *Quia sunt in Comitatu*, without any Relation to Parliament, because they are either in the Train of the King, or because placed in each County, *ad Regendum Populum*, and so assumed to the King to the like end that *Moses* did his under-Officers, in Governing his People. They were not only to be Companions as to his Person, but in respect of his Cares; *Pares Curis, solo diademate dispares*. They are the Highest, and in the nature of Privy-Counsellors.

Lib. 1. c. 8. num. 2.
Co. Lib. 7.
Nevill's
Case, Co. 2.
Inst. 5. 6. Co.
Lib. 12.
Earl of
Shrovesbury's
Case.
Ob.

Sol.
Lib. 1. c. 8.
Num. 5.

Partis Reg-
ni, non Regis.
but

but Created by the Sovereign Prince (the Fountain of Honour) and so not equal unto him, though exalted above Fellow-Subjects. To be short, if this word [*Comites*] should imply a Co-ordinative Society, it must needs follow that the Commons must be the King's Peers too, for they are as much Co-ordinate with His Majesty as the other; And so let's set up Three Thrones, One for the King, another for the Lords, and a Third for the House of Commons.

I would advise you (Sir) to make a Voyage, next long Vacation, into *France*, and argue there at the *French* Court, from the Denomination of *Pares Francie*, and see what Thanks you shall have for your Logick. Thus much for the Lords, I must have a touch at the Commons too.

As for the Commons, they surely will not pretend to exceed the Lords in Antiquity: If what Sir Robert Cotton (that Famous Antiquary) relates, in some part of his *Posthuma* Works, be truth; And he hath been pleased in this very manner to express himself.

"As this great Court or Council, consisting of the King and
 "Barons, ruled the great Affaires of State, and Controlled all Inferiour Courts; so were there certain Officers, whose transcendent Power seemed to be set to bound in the Execution of
 "Princes Wills, as the Steward, Constable and Marshal fix'd upon
 "Families for many Ages. They as Tribunes of the People, or
 "Ephori amongst the *Athenians*, grown by an unmannerly Carriage, fearful to Monarchy, fell at the Feet and Mercy of the King,
 "where the daring Earl of *Leicester* was slain at *Evesham*. This
 "Chance and the Dear Experience Henry the Third himself had
 "made at the Parliament at *Oxford* in the Fortieth year of His
 "Reign, and the Memory of the many streights his Father was
 "driven unto, especially at *Rumney Meade* near *Stanes*, brought
 "this King wisely to begin, what his Successor fortunately finished in lessening the Strength and Power of His great Lords.
 "And this wrought by searching into the Regality, they had Usurped
 "over their peculiar Sovereigns (whereby they were (as the Book
 "of Saint *Alban*'s termeth them) *Quot Domini, Tot Tyranni*;) and
 "by weakning that Hand of Power which they carryed in the
 "Parliaments, by Commanding the Service of many Knights,
 "Citizens and Burgeses to that General Council. Now began the frequent sending of Writs, to the Commons their
 "Assents, not only used in Money, Charge and Making Laws (for
 "a before

“ before all Ordinances passed by the King and Peers) but their ^{That the}
 “ Consent in Judgments of all natures, whether Civil or Criminal. ^{King with}
 By what I have here offered out of Sir Robert Cotton, and else- ^{the Prelates}
 where before in this Discourse; It is as clear as the Sun at Noon ^{and Peers,}
 day, That the Two Houses of Parliament are not Co-etaneous with ^{were here-}
 the First King, much less before him, and consequently the Legisla- ^{tofore the}
 ture cannot be said to be Originally and Radically seated in the ^{Common}
 Lords and Commons. ^{Council of}
^{the Realm}
^{(and conse-}
^{quently the}

Commons were no part of the Court of Parliament in Ages past) may be evidenced by these Authorities; Cambden in his Britannia says, that in the time of the Saxon Kings, and the ensuing Ages, the Great and Common Council of the Land, was Prasentia Regis, Prælatorum, Procerumque Collectorum. Selden tells us out of an Old Chronicle of the Church of Lichfield, that King Edward by Advice of his Barons revived a Law which had lain dormant Sixty seven years. And in the same Chronicle it is said, that William the Conquerour held a Council of his Barons, Anno 4. Regni sui apud Londinias, the next year the Conquerour had a Council of Earles and Barons at Pivenden Heath to decide the great Controversie between Lanfrank Arch-bishop of Canterbury and Odo Earl of Kent. King John in the first year of his Reign, Summoned his Magnates, his Great Men to a Parliament at Wiston, and the words of the Roll are Commune Concilium Baronum, the Common Council of my Barons at Winchester.

Secondly, As I have made it appear that the Architectonick Power Paramount of making Laws in Parliament was never Natively, and formally seated in the Two Houses; so I come now to prove that the Supream Legislative Authority was never vested in them, by way of Emanation, or derivation from the Imperial Crown of this Nation.

Now if they have derivatively such a power, it must be one of these two wayes, either by way of Donation or Usurpation: Again, if they have it *via Donationis*, by way of Grant, they must have it either by way of Division or by way of Communication: But they cannot challenge it by either of these same wayes.

1. The Houses of Parliament may not challenge a Co-ordination in the Supremacy by way of Division or Partition; For *Suprema potestas*, is an Entity or being Indivisible; as it is subordinate to none but God Almighty; so it admitteth no Co-ordinate, Collateral, Co-equal or Corrival Power; To make *Majestatem in Majestate*, *Regnum in Regno*, more than one Sovereign in a Kingdom, is inconsistent with *Supremity*; for Supream admits neither of Equal nor Superiour, and to affirm it, is *Contradictio in Adjectio*. And therefore you may read, that Henry de Beauchamp Earl of Warwick for the singular favour that King Henry the Sixth bare to him, Crowned him King of Wight: But we could never find (says Cook) any Letters ^{Co. 4. m. 2}
^{f. 237.}
 Patents

Patents of this Creation, because (as some hold) the King could not by Law, Create him a King within his own Kingdom, because there cannot be Two Kings in one Kingdom, or if such there be, they are but *Reguli* or *Proreges*, Kings to their Subjects, and Subjects to the Supream King.

So *Oedipus* King of the *Thebans* having Issue Two Sons, *Polynices* and *Eteocles*, ordained that after his Decease, his Two Sons should alternative by Course, Reign in his Kingdom. But what was the event? *Fratres de Regni Hereditate dissidentes singulari certamine Congressi mutuis vulneribus ceciderunt.*

Let any Man look upon the Estate of the *Roman* Empire, when it was divided by *Constantine* the Great amongst his Three Sons, *Constantinus*, *Constantius* and *Constans*; Or upon the Estate of the Western Empire, after the Division made by *Lotharius*, *Lewis* and *Charles*, Sons of *Lodovicus Pius*; And he will find most sad and horrible Confusions ensued on such Partitions. But letting pass Foreign Countries, we must not pretermitt the miserable Estate within this Kingdom, under the Heptarchy until all was Re-united under one Sovereign; And this is the Reason that in *England*, *Scotland* and *Ireland*, the Royal Dignity is descendible to the Eldest Daughter or Sister, *Co. 4. Inst. f. 243. & on Lit. fol. 165. a. For Regnum non est divisibile*: And so was the Descent of *Troy*.

*Præter te sceptrum Ilione quod gesserat olim
Maxima Natarum Priami.*

2. As the Two Houses cannot have a Co-ordinate Power with the King, by way of Division; so neither can they challenge to themselves a Co-ordination in the Supremacy it self by way of Communication; for the Prerogative of Legislation (as many others) is so naturally intrinsically inherent in the Supremacy (for where Majesty is, there must be the Power Legislative,) that it cannot be transferred or separated from the Crown, or so Communicated to Both Houses, as to denude or disrobe the King of that Sacred Supream Right which God has given to him, as his Vice-Gerent on Earth.

3. H. 1.
p. 50.

Ea quæ Jurisdictionis sunt & pacis (sayes our Bracton) *ad nullum pertinent nisi ad Coronam, & dignitatem Regiam, nec à Coronâ separari poterunt, cum faciant ipsam Coronam, Lib. 2. c. 24.*

The old Statute of *Prærogativa Regis* tells us, That our King can grant no Prerogative to the prejudice of the Crown. And thereupon

upon whatsoever a King of this Land Grants to his Subjects, or to any other that is essentially in the Crown of this Kingdom, that is to say, really annexed to the Person of a Man, as he is King of England, as that the parting with it, makes him to be no King, or a less King than he ought to be in Dignity or Royal Power the Grant is void, the Grant how large soever, It must be understood with this Limitation, *Salvo Jure Coronæ*. And how tender our Former Kings and their Subjects have been of the Rights and Prerogatives of the Crown, Pray (Sir) at your good leasure consult the Statutes of 28. E. 1. c. 2 & 20. 34. E. 3. c. 15 & 17. 5. R. 2. c. 13. 11. R. 2. c. 9. 9. H. 5. c. 1. 28. H. 6. c. 2 & 27. E. 1. c. 5.

With our Municipal Laws do concurr Two Famous Jurists, I mean, *Gothofrede* and *Suarez*.

The former returns an Answer to this *Quære, Potestne Princeps Regalia alteri Cedere?*

Potest (sayes he) *His temperamentis adjectis, ut ne Regalia Jura sua cedat sine summâ necessitate, ac ut ea cedat ex causâ necessariâ, ut ne ea tota cedat: Deinde ut quæcunque cedit suo sponte motu, ac sua sponte sciens, prudensque cedat, Principatûs Jure Excepto: quod etsi nominatim non fuerit exceptum, tacitè tamen exceptum intelligitur (cum adversus omnes Regalia possidentes, in suo Regno, Jus instituendæ Actionis habeat) adeo ut Jus id nullo tempore possit præscribi.*

The latter viz. *Suarez* sayes thus, *Regnum est veluti quoddam Officium quod incumbit propriæ Personæ, cui confertur, & non tam est propter ipsam, quam propter eos, qui regendi sunt, & ideo non potest Rex, vel Regina tale onus à se separare, etiam quoad usum, vel administrationem, ita ut non maneat apud ipsum suprema potestas, & Obligatio Regendi; non ergo transferri potest illo modo Administratio Regni in Regem, Ratione Matrimonii.* *Suarez. de Legibus Lib. 2. num. 12.*

The sum of all that I have said as to the point of Communication is this; That however the prime essential Constitutives of Monarchy, in the exercise of them, may be intrusted by the King to the Subject by way of Delegation to ease his Burden and to facilitate his Royal Charge, yet in so doing, he does not, he cannot divest himself of the Sovereign Power, nor of any of those Sacred Rights and Prerogatives that are naturally and intrinsically inherent in his Imperial Crown.

In the last place, as the Two Houses cannot challenge to themselves by way of Grant (that is to say neither by Division, nor by Communication) a Co-ordination in the very Supremacy of Power self (and consequently there cannot be any such thing as a Co-

equality of Power in the Legislature;) so neither can they make furth a good and Lawful Title to themselves, for a Fellowship in the Legislative Power, *via usucapionis*, by virtue of any Custom or Prescription; For no immemorial Custom can hold good, when there be Authentical Records to the Contrary; And whether there be not such, I will appeal unto your own good self.

Antiently the Law Enacted began thus, *Rex Statuit*, the King Ordains, and before the Laws and Statutes in each Kings Reign from the time of *Edward* the First to this day, I find the Title or Introduction thus expressed as follows.

7. E. 1. the Statute of Mortmain, *We therefore by Advice of our Prelates, Earles, Barons and other Subjects, have provided, made and Ordained.*

9. E. 2. The Statute of Sheriffs———Our Lord the King, by the Assent of the Prelates, Earles, Barons and other great Estates, hath Ordained and Established.

5. E. 3. Statute de Natis ultra Mare, Our Lord the King by the Assent of the Prelates, Earles, Barons and other Great Men, and all the Commons of the Realm, hath Ordained and Established these things under Written.

3. R. 2. c. 3.———Our Lord the King, by the Advice, and Common Consent, &c. hath Ordained and Established.

4. E. 4. c. 1.———Our Lord the King, by the Advice, Assent Request and Authority aforesaid, hath Ordained and Established.

1. R. 3. c. 2.———Therefore the King will, it be Ordained by the Advice and Assent of the Lords Spiritual and Temporal, and the Commons of this Present Parliament.

1. H. 7. c. 7.———The King our Sovereign Lord, by the Advice and Assent of the Lords Spiritual and Temporal, at the Supplication of the Commons ordaineth.

1. H. 8. c. 7. The King our Sovereign, by the Assent of the Lords Spiritual and Temporal, and the Commons ordaineth.

1. E. 6. c. 4.———Wherefore the King our Sovereign Lord, at the humble Petition and Suit of the Lords and Commons, doth Ordain, Declare and Enact, by the Assent of the Lords Spiritual and Temporal, and of the Commons in Parliament Assembled.

1. Mar. c. 1.———Be it therefore Enacted by the Queen our Sovereign Lady, with the Assent of the Lords Spiritual and Temporal, and of the Commons in this present Parliament Assembled.

3. Ediz. c. 3.———Be it Enacted by the Queens Most Excellent Majesty, with the Assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled.

1. Jac. c. 2. *Be it therefore Enacted by the King's Most Excellent Majesty, by and with the Assent and Consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled.*

16. Car. 1. c. 1. *Be it Enacted by the King's Most Excellent Majesty, with the Consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament.*

12. Car. 2. *nunc Regis c. 11. Be it Enacted by the King's Most Excellent Majesty, with the Advice and Consent of the Lords and the Commons in this present Parliament.*

Thus (Sir) by the Title or Introduction of our Statutes in each King's Reign (from King *Edward* the First, to this very day) it is clearly proved, that the Two Houses cannot challenge a Co-ordinate Power with the King in making Laws in Parliament by Usage, or Prescription, the Legislative Authority being only in the King, though the use of it be restrained to the Consent of the Lords and Commons in Parliament; *Le Roy fait les Loix avec le Consent des Seigniors, & Communs, & non pas les Seigniors & Communs avec le Consent du Roy*; The King makes the Laws with the Consent of the Lords and Commons, and not the Lords and Commons with the Consent of the King: In a word, the Sovereign is the sole Legislator, it is His Stamp and Royal Will, and that alone which gives Life, and Being, and Title of Laws to that which was before, but Counsel and Advice; All marks of Supremacy being still in him, nor is it an Argument of Communicating his Power, that he restrains himself from exercising some particular Acts without Consent of Parliament, for it is by virtue of his own Grant, that such after-Acts shall not be valid. He hath not divided his Legislative faculty, but tyed himself from using it, except by the Advice and Consent of the Peers, and at the Request of the Commons, their Rogation must precede his Ratification. Wherefore upon what has been said, I may very well pronounce our Author's words.

That the Making of Laws is a peculiar and incommunicable privilege of the Supreme Power; And the Office of the Two Houses in this Case is only Consultive or Preparative, but the Character of the Power, rests in the final Sanction which is in the King; And effectually the passing of a Bill is but the granting of a Request; the Two Houses make the Bill 'tis true, but the King makes the Law, and 'tis the Stamp, and not the Matter, that makes it Current.